

# Dr. Richard Cordero

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August 11, 2003

Ms. Roseann B. MacKechnie  
Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 1802  
New York, NY 10007

Re: Lodging a complaint under 28 U.S.C. §372(c)(1)

Dear Ms. MacKechnie,

I hereby respectfully submit to you a complaint under 28 U.S.C. §372(c)(1) concerning the Hon. John C. Ninfo, II, United States Bankruptcy Judge at the Bankruptcy Court for the Western District of New York. Judge Ninfo has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. This is manifest in his mismanagement of a case in which I am a defendant pro se, namely, In re Premier Van Lines, Inc., docket no. 02-2230. The facts speak for themselves, for although this case was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order, issued orally at a pre-trial conference held last January 10 at the instigation of an assistant U.S. trustee, by not requiring the plaintiff or his attorney as little as to choose, as required by his order, one of the six dates that, pursuant to the order, I proposed for carrying out his order that I travel to Rochester to conduct an inspection at the plaintiff's warehouse in Avon; and
7. failed to insure execution by the plaintiff and his attorney of its second and last discovery order issued orally at a hearing last April 23, while I was required to travel and did travel to Rochester and then to Avon on May 19 to conduct the inspection.

As a result of Judge Ninfo's inexcusable inaction, this case has made no progress since it was filed. Nor will it make any for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that I will have to travel to Rochester a day in October and another in November to attend a hearing with the other parties – all of whom are locals- where we will deal with the motions that I have filed -including an application that I made as far back as last December 26 and that at his instigation I resubmitted on June 7- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. Then, after the hearings in October and November, I will be required to travel to Rochester for further hearings to be held once a months for seven to eight months!

The confirmation that this case has gone nowhere since it was filed last September comes from Judge Ninfo himself. In his order of July 15 he states that when we meet in October for the

first “discrete hearing” –a designation that I have failed to find in the F.R.Bankruptcy P. or the F.R.Civ.P.- we will begin by examining the plaintiff’s complaint, thereby acknowledging that we will not have inched beyond the first pleading by the time the case will be in its 13<sup>th</sup> month.

Nor will those “discrete hearings” achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October meeting. He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court’s intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared the plaintiff any sanctions, even after I had complied with his orders to my detriment and requested those sanctions and even when Judge Ninfo himself requested that I write a separate motion for sanctions and submit it to him.

Nor has the Judge imposed any adverse consequences on a party defaulted by his own Clerk of Court or on the trustee that submitted false statements to him. Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly from me. By contrast, Judge Ninfo has let everybody know, particularly me, that he would impose dire sanctions on me if I failed to comply. Thus, at the April 23 hearing, when the plaintiff wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered me to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to me removed at my expense to any other warehouse in Ontario, that is, whether in another county or another country, it did not matter to him.

By now it may have appeared to you too that Judge Ninfo is not impartial. Indeed, underlying the Judge’s inaction is the graver problem of his bias and prejudice against me. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail my appeals from decisions that the Judge has taken for the protection of the local parties and to the detriment of my legal rights. There are too many of those acts and they are too precisely targeted on me alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity.

Hence, the even graver issue that needs to be addressed is whether Judge Ninfo’s conduct has been prejudicial to the effective and expeditious administration of court business because it forms part of a pattern of intentional and coordinated conduct engaged in by both the Judge and other court officers to achieve an unlawful objective for their benefit and that of third parties and consistently to my detriment. The evidence that justifies this query is set forth in detail in the accompanying Statement of Facts, which is followed with a copy of Judge Ninfo’s July 15 order. To expedite the determination of this complaint, I am providing in triplicate them, this letter, as well as an appendix with most items in the record, to which I refer frequently in the Statement.

I trust that you sense the serious implications of this matter and, pursuant to §(c)(2), will promptly transmit this complaint to the chief judge of this circuit, the Hon. John M. Walker, Jr. Meantime, I look forward to receiving your acknowledgment of receipt of this complaint and, thanking you in advance, remain,

yours sincerely,

*Dr. Richard Cordero*